



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,900	04/12/2004	Marc Ramet	237990US26	2487
22850	7590	02/20/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER LE, HUYEN D	
			ART UNIT 3751	PAPER NUMBER
			NOTIFICATION DATE 02/20/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	Application No. 10/821,900	Applicant(s) RAMET, MARC	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-21, 24-28, 30-43, 45-56, 58, 59, 62-66, 68, 71-75 and 77-85 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9, 30, 32, 50-54, 59, 62-66, 68 and 71-73 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13, 20, 31, 33-43, 47-49, 56, 74, 75 and 77-83 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 14, 16, 17, 21, 24-28, 45, 46, 57, 84-85 is/are rejected.
- 7) ☒ Claim(s) 8, 11, 15 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                           |

### DETAILED ACTION

1. Applicant is advised that the Advisory Action mailed on 01/24/2008 is vacated due to an error.
2. The indicated allowability of claims 7, 10, 14, 16, 17, 19, 23 (now incorporated into claim 1), 29 (now incorporated into claim 24), 58, 59 is withdrawn in view of the reference to MacDonald. Rejections based on the cited reference follow. Therefore, the Final Action mailed on 10/04/2007 is withdrawn.
3. Claims 7, 30, 59 are directed to an invention that is independent or distinct from the elected invention of species II, Fig. 4. for the following reasons: claims 7 and 30 describe the applicator 12 is mounted so as to pivot about pivoting axes 13 and 14 orthogonal to the principal lengthwise 8 of the grasping element 2 at free ends of the arms 10 and 11 as shown in Fig. 1 of species I and indicated on page 9, paragraph [0059] of the specification; claim 59 describes the grasping element 2 including a handle with a first coupling mechanism 7 and a second coupling mechanism 19, the two arms 4 and 5 detachably coupled to the first coupling mechanism 7; and the reservoir 15 detachably coupled to the second coupling mechanism 19 as shown in Figs. 1 and 3 and indicated on page 11, paragraph [0069]. Accordingly, claims 7, 30, 59 are now withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to the nonelected species I, there being no allowable generic or linking claim.
4. In summary, claims 7, 9, 30, 32, 50-54, 59, 62-66, 68, 71-73 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to

Art Unit: 3751

the nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 08/02/2006.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 21, 24-28, 45, 46, 57, 84-85 are rejected under 35 U.S.C. 102(b) as being anticipated by MacDonald (1,417,848).

The MacDonald reference discloses a device for applying a product to a surface comprising: a grasping element 7; two arms 16 mounted on the grasping element via a junction; and an applicator (floss) which is coupled to both of the two arms 16 and which extends between the two arms 16; a reservoir 6 containing a dental product 20; the two arms 16 are at least partially elastically deformable and wherein the reservoir is at least partially concealed in a cavity within the device.

The functional statement of the intended use of the device on surface which is an eyelid has been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the MacDonald device which is capable of being used to apply a cosmetic product to an eyelid.

Regarding claim 2, the applicator 4 is at least partially elastically deformable.

Regarding claim 3, at least one of the two arms is at least partially elastically deformable.

Art Unit: 3751

Regarding claim 4, the grasping element 7 is elastically deformable in proximity to the junction.

Regarding claim 5, each of the two arms 16 has a free end, and the two arms 16 form an arc and support the applicator (floss) between the two free ends.

Regarding claims 21, 24, the grasping element 7 connects to the reservoir 6 in a position preventing the applicator (by head 19 of spindle 9) from being charged (with powder, see col. 3, lines 48-59) when the applicator is applied against the surface.

Regarding claim 45, the grasping element 7 serves as a closure capsule for the reservoir.

Regarding claim 46, the grasping element 7 facilitates attachment (at 8) to the reservoir 6.

Regarding claims 84 and 85, the reservoir 6 is detachably coupled to the grasping element 7.

7. Claims 10, 14, 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumeister (691,581)

The Baumeister reference discloses a device for applying a product to a surface comprising: a grasping element g; two arms a mounted on the grasping element via a junction h'; and an applicator c' between the two arms; wherein the two arms or said junction are at least partially elastically deformable; and wherein the two arms are mounted integrally and rotatably on the grasping element g about a fixed axis k of rotation, the axis of rotation k forming a non-zero angle with a principal lengthwise axis

of the grasping element, and wherein in a first position the two arms extend in a plane parallel to the principal lengthwise axis of the grasping element g.

Regarding claim 14, at least one of the two arms and the grasping element incorporates a pivot k engaged in a seating to form the axis of rotation.

Regarding claims 16 and 17, the two arms and the grasping element cooperate so as to enable an immobilization of the two arms in at least one or two predefined positions relative to the grasping element.

Regarding claim 19, in a second position (Fig. 2), the two arms extend in a plane having a non-zero angle with the principal lengthwise axis of the grasping element.

#### ***Allowable Subject Matter***

8. Claims 8, 11, 15, 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 12-13, 20, 31, 33-43, 47-49, 56, 74-75, 77-83 allowed.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 6, 10, 24, 30, 58 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Huyen Le  
Primary Examiner  
Art Unit 3751

HL